



[REDACTED]

12th February 2021

Subject: Appeal FAC180/2020 in relation to licence CE07 FL0202

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Licence CE07 FL0202 for felling and replanting of 14.5 hectares at Kinturk, Slaghbooly, Tullaghoboy Co. Clare granted by the DAFM on 25th March 2020.

Hearing

An oral hearing of appeal FAC180/2020, of which all parties were notified, was held by the FAC on 5th February 2021. In attendance:

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Vincent Upton
Appellant:	Not present [REDACTED]
Applicant / Representative(s):	[REDACTED]
Department Representative(s):	Mr. Anthony Dunbar & Ms. Eilish Keogh
Secretary to the FAC:	Ms. Marie Dobbyn
Observer(s):	[REDACTED]

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant this licence CE07 FL0202.

The decision pertains to a felling licence for 14.5 ha. The forest is currently composed of Sitka spruce planted in 1974, 1977, 1983, and 1996. The application included inventory, restocking, environmental information, a harvest plan including operational and environmental rules and maps. A second AA pre-

screening report was submitted by the Applicant dated 29th April 2020. It is proposed to replant the land with Sitka spruce, lodgepole pine and broadleaves. The site is described as moderately sloped and with a peat soil type. The application was referred to Clare County Council and no response was provided.

An Appropriate Assessment Screening was undertaken by the DAFM and identified seven sites within 15km and that there was no reason to extend the radius in this case. Each site is considered in turn and is screened out for Appropriate Assessment and reasons are provided. The DAFM undertook and documented a consideration of in-combination effects and concluded that DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites. The licence was issued on 25th March 2020 with standard conditions attached.

There is one appeal against the licence decision. The grounds submit that there has been a breach of Article 4(3), 4(4) and 4(5) of the EIA Directive 2014/52/EU, including that criteria set out in the Annex III of the Directive have not been considered, that the application does not represent the whole project and that any determination, as a result, would not be valid. The licence conditions do not provide a system of protection for wild birds consistent with Article 5 of the Birds Directive. That there has been a breach of Article 10(3) of the Birds Directive. That there has been a breach of Article 10(3) of the Forestry Regulations regarding a failure to make available for inspection a copy of the application.

The FAC sought additional information from the Appellant regarding the suggested breach of the EIA Directive and the class of development to which the Appellant considers the licence pertains. The Appellant provided a response to the request but did not state which class of project listed in either Annex I or II of the EIA Directive they considered the licenced activity to fall within.

In a written statement to the FAC in response to the appeal, the DAFM submitted that the standard operational activities of clear-felling and replanting already established forests areas are not included under the specified categories of forestry activities or projects for which screening for EIA is required as set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017. The DAFM contended that screening for EIA was not required in this case and that breaches of Article 4(3), 4(4) and 4(5) had not occurred. At the oral hearing the DAFM reasserted its contention that the proposal does not involve deforestation or a class of project covered by the EIA Directive or by National legislation. Regarding licence conditions the DAFM submitted that it is "a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent, expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply." In response to the suggested breach of Regulation 10(3), the DAFM referred to a request from the Appellant for documentation on 451 applications and that the Appellant had appealed the licence in question. The DAFM further submitted that the felling licence application had undergone an appropriate assessment screening in line with stated procedures but that during that some qualifying

interests/special conservation interests had been truncated on the recorded form and that a revised full form was also submitted.

An oral hearing of the appeal was held and attended by representatives of the DAFM and the Applicant. The DAFM outlined their processing of the application, including the data sources employed, and confirmed that they were satisfied that sufficient information was available to issue the decision. They restated their written submission that the licenced activity does not constitute deforestation another class of development covered by the EIA Directive. They confirmed that the appropriate assessment screening was completed before the licence was issued and that the County Council had not responded on the referral. The Applicant outlined the characteristics of the licenced area and the activity and the standard operations and notifications in which they engage. They submitted that the land is bordered by forest, agricultural land and Lough Kinturck to the east. The land would be accessed from the south and that forest roads are in place. They submitted that the activity did not constitute deforestation.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The FAC considered that the EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case by case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The felling of trees, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the felling and replanting of an area of 14.5 hectares. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. Therefore the FAC agrees that screening for EIA was not required in this case and that breaches of Article 4(3), 4(4) and 4(5) had not occurred.

As noted, an Appropriate Assessment Screening, including a consideration of other plans and projects in combination with the proposed felling, was undertaken by the DAFM and identified seven sites within 15km and that there was no reason to extend the radius in this case. The DAFM concluded that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites. The forest stand is crossed by two mapped streams (Kinturck and Aughaglanna) that enter Kinturck Lough. These streams form part of the Aughaglanna 010 WFD waterbody and has been assigned a good status for 2013-2018 and forestry has not been identified as a

pressure on this waterbody. The waterbody lies in the Inagh (Ennistymon) SC_010 subcatchment in the Mal Bay Catchment. The Aughaglanna River flows easterly and enters the Slaghbooly Lough and continues northeasterly to join the Inagh River. This River flows westerly through Inagh and enters Drumcullaun Lough, continuing westerly through Ennistymon before entering the boundaries of Inagh River Estuary SAC, which has a number of coastal habitats as qualifying interests. The hydrological distance from the forest to the SAC is over 30km and, in addition, as the watercourse passes through a number of rivers and lakes and having regard to the qualifying interests and conservation objectives the FAC is satisfied that there is no pathway of effects on the SAC. The FAC considered publicly available information and identified the same seven sites within 15km, all of which lie at a very considerable distance from the felling, and considered the reasons provided for screening by the DAFM. The FAC concurs with the DAFM conclusion that the proposed activity was not required to proceed to Appropriate Assessment. Regarding the truncation of some species and habitats on the original record, the FAC is satisfied that this constitutes an obvious clerical error and would not have any effect on the outcome of the decision.

In relation to the appellant's stated ground of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. The FAC had regard to the DAFM statement and note that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant should not be attached to the licence.

Regarding the grounds that refer to Regulation 10(3), the FAC understands this to relate to Regulation 10(3) of the Forestry Regulations 2017 (SI 191 of 2017) which provides that the Minister may make application details available to the public. The DAFM record suggests that the file related to CE07 FL0202 was sent to the Appellant on 2nd March 2020 before the issuing of the licence and the making of the appeal. In addition, the Appellant proceeded to appeal the licence decision and an oral hearing of the appeal was arranged, although not attended by the Appellant. The FAC does not consider that there is any evidence that the public consultation process was inappropriate in this instance.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. In deciding to affirm the decision regarding CE07 FL0202, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



Vincent Upton, On Behalf of the Forestry Appeals Committee